IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 381 of 1984

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

COMMISSIONER OF INCOME-TAX

Versus

GUJARAT STATE FERTILIZERS CO. LTD.

Appearance:

MR AKIL QURESHI with MR MANISH R BHATT for Petitioner

MR JP SHAH for Respondent No. 1

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE A.R.DAVE

Date of decision: 29/08/2000

ORAL JUDGEMENT

(per D.M. Dharmadhikari, C.J.)

This Reference made by the Income Tax Appellate Tribunal Ahmedabad Bench 'B' arises out of two cases, Reference Application No. 338/Ahd/1984 and Reference Application No. 339/Ahd/1984. As is apparent from the Statement of Case submitted by the Tribunal in the aforesaid two Reference Applications, the following questions of law are referred for our answer :

"Reference Application No. 338/Ahd/1984

1 Whether the Appellate Tribunal has been right in law in holding that the assessee was entitled to claim development rebate on the expenditure incurred on the factory compound wall as claimed?

2. Whether, on the facts and in the circumstances of the case, the assessee is entitled to claim deduction under section 80J of the Income-tax Act, 1961 in respect of building rented out to the outsiders?

Reference Application No. 339/Ahd/1984

1. Whether the Appellate Tribunal has been right in law in holding that in computing the capital employed for granting deduction under section 80J of the Income-tax Act, 1961 the debts and liabilities should form part of such capital employed and the claim cannot be negatived in view of Rule 19A of the Income-tax Rules, 1962?"

Learned Counsel Shri Akil Qureshi appearing for the department and Shri J.P. Shah, learned counsel, appearing for the assessee agree that question No. 1 in Reference Application No. 338/Ahd/1984 and question No. 1 in Reference Application No. 339/Ahd/1984 are both covered fully by the decisions reported in (1996) 219 ITR 550 Commissioner of Income-tax vs. Gujarat State Fertilizers Co. Ltd. (the case of the same assessee) and in (1985) 152 ITR 308, Lohia Machines Ltd. v. Union of India.

Question No. 2 arising in Reference Application No. 338/Ahd/1984 only, therefore, survives for being answered by us.

The brief facts necessary for answering question

No. 2 quoted above based on the claim of deduction by the assessee under sec. 80J of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') are as under:

The assessee, Gujarat State Fertilizer Co. Ltd., undisputedly, was a new company in the Assessment Year in question, that is, 1970-71. It is also a matter of common knowledge that fertilizer industry is a highly polluting industry and is therefore located away from cities and towns. For setting up of new industry, apart from its factory and plants, it has developed a township for its employees. In the township there are shops constructed and given to the shopkeepers for catering to the shopping facilities to the inhabitants of the township. Some of the quarters in the township have been given on rent for the residence of the shopkeepers as the township of the assessee company is far away from the city and other towns.

The question raised before us is whether the accommodation provided for residence of the shopkeepers can be treated to be "capital employed" to qualify for deduction at the rate of 6% from the gross income from its business in accordance with sec. 80J of the Act read with Rule 19A of the Income-tax Rules, as the provisions stood at the relevant time.

The relevant part of Section 80J for the purpose of this Reference and as it existed in the relevant assessment year reads as under:

"80J. Deduction in respect of profits and gains from newly established industrial undertakings or ships or hotel business in certain cases.- (1) Where the gross total income of an assessee includes any profits and gains derived from an industrial undertaking or a ship or the business of a hotel, to which this section applies, there shall, in accordance with and subject to the provisions of this section, be allowed, in computing the total income of the assessee, a deduction from such profits and gains (reduced by the aggregate of the deductions, if any, admissible to the assessee under section 80H and section 80I) of so much of the amount thereof as does not exceed the amount calculated at the rate of six per cent per annum on the capital employed in the industrial undertaking or ship or business of the hotel, as the case may be, computed in the prescribed manner in respect of the previous year relevant to the assessment year the amount calculated as aforesaid being hereafter, in this section, referred to as the relevant amount of capital employed during the previous year)."

Rule 19A of the Income-tax Rules, 1962 in force in the relevant year contains the method of computation of deduction under sec. 80J. The said rule reads as under:

"19A. (1) For the purposes of section 80J, the capital employed in an industrial undertaking or the business of a hotel shall be computed in accordance with sub-rules (2) or (4), and the capital employed in a ship shall be computed in accordance with sub-rule (5).

(2) The aggregate of the amounts representing the values of the assets as on the first day of the computation period, of the undertaking or of the business of the hotel to which the said section 80J applies shall first be ascertained in the following manner :

(i) in the case of assets entitled to depreciation, their written down value;

(ii) in the case of assets acquired by purchase and not entitled to depreciation, their actual cost to the assessee;

(iii) in the case of assets acquired otherwise than by purchase and not entitled to depreciation, the value of the assets when they became assets of the business;

(iv) in the case of assets being debts due to the person carrying on the business, the nominal amount of those debts;

(v) in the case of assets being cash in hand or bank, the amount thereof."

The learned counsel appearing for the department contends that rent income derived from such residential accommodation given to shopkeepers does not qualify for deduction under sec. 80J of the Act as income from business of the assessee as the deduction is not computable in the manner prescribed under Rule 19A. The second ground urged on behalf of the department is that residential accommodation given to shopkeepers who are

not employees of the assessee company cannot be treated to be "capital employed" in business or industry as there is no direct nexus such residential accommodation given to outsiders with the industrial or business activities of the assessee.

Reliance is placed on the decisions of this Court reported in (1993) 201 ITR 208, C.I.T. v. New India Industries Ltd., and (1993) 203 ITR 933, New India Industries Ltd. v. C.I.T. Reference is also made on behalf of he department on the decision of the Supreme Court in the case of M/s. Loha Machines Ltd. and anr. v. Union of India and others reported in AIR 1985 SC 421 for understanding the expression "capital employed".

The learned counsel appearing for the assessee in his reply submits that rent income derived from residential accommodation given to shopkeepers is separately shown in the return under the head "Income from house property", but such residential accommodation being necessary for the township of the assessee, could be treated as "capital employed" for claiming benefit of deduction under sec. 80J of the Act.

The second ground urged on behalf of the assessee is that such residential accommodation provided to the shopkeepers in the township of the premises of the assessee was necessary for the industrial or its business activities and it cannot be said that such accommodation had no direct nexus with the industrial activity of the assessee.

Reliance is placed on the decision of the Supreme Court in the case of Bajaj Tempo Ltd. v. C.I.T., (1992) 196 ITR 188. Taking assistance from the observations of the Supreme Court in the case of Bajaj Tempo (supra), it is submitted that similar provisions contained in sec. 15C of the repealed Income-tax Act, 1922 were liberally construed for extending the benefit of deduction at the rate of 6 per cent from the gross income to promote and help new industries and which is the object for which the benefit of deduction has been provided under the said section.

Lastly, on behalf of the assessee, the learned counsel adds that the benefit of deduction under sec. 80J of the Act having been allowed to the assessee in the earlier assessment years, the said benefit cannot be suddenly withdrawn by questioning grant of such deduction in the Assessment Year in question. Reliance is placed on the decision of this Court in (1981) 123 ITR 669,

Having heard the learned counsel for the parties and critically examining the relevant provisions contained in sec. 80J in the light of the decisions cited before us, we are of the considered opinion that, as in the preceding assessment years, the assessee cannot be denied the benefit of deduction at the prescribed rate under sec. 80J on the capital employed in the form of residential accommodation given to the shopkeepers in the township of the assessee. We are also of the view that merely because the rent income from such residential accommodation is shown as 'income from house property', under a different head, deduction under sec. 80J for such residential accommodation as "capital employed' cannot be denied.

The main question that fall for consideration is whether such residential accommodation which are made available to shopkeepers who are not employees of the assessee can be termed as "capital employed" as to qualify for deduction under sec. 80J of the Act. As has been stated on the facts mentioned above, the assessee is an industry engaged in manufacture of fertilizers, which is a highly polluting industry, located away from the city and town. For the purpose of carrying on business activities, it was required to develop a township for its employees. For employees living in its township it is necessary to provide them shopping facilities. The shopkeepers having shops in the township have been provided with residential accommodation in the township. Such residential accommodation provided to shopkeepers is, therefore, in the course of the industrial or business activities of the assessee. But for the industry and the township for the industry, the residential accommodation was not required to have been given to outsiders.

As observed by the Supreme Court, the provisions of sec. 15C, which is analogous to sec. 80J, have to be construed in the light of the object for which the provision is enacted, i.e., "to encourage and promote the growth of industries and, consequently, a liberal construction must be given to the operation of that provision." It is also observed, "the section, read as a whole, was a provision directed towards encouraging industrialisation by permitting an assessee setting up a new industrial undertaking to claim the benefit of not paying tax to the extent of of 6 per cent in a year on the capital employed.....Since the provision intended

for promoting economic growth has to be interpreted liberally, the restriction on it, too, has to be construed so as to advance the objective of the section and not to frustrate it."

As we have stated above, a big industry, new or running, requires a township for accommodating its employees and other members of the staff. If the township is developed, shopping complex is a necessity in such township and if the township is far away from other towns and cities, providing some accommodation to shopkeepers also becomes necessary. By adopting, therefore, a liberal approach in construing the provisions under sec. 80J as it is intended to promote industrial growth, it has to be held that the residential accommodation given to the shopkeepers would be "capital employed" and would qualify for deduction at the prescribed rate and in the prescribed manner under sec. 80J of the Act.

As a result of the aforesaid discussion, question No. 2, arising out of Reference Application No. 338/Ahd/1984 quoted above, is answered in favour of the assessee and against the revenue.

The reference stands disposed of. There shall be no order as to costs.

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(D.M. Dharmadhikari, C.J.)

(A.R. Dave, J.)

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